

PUBLIC HEARING

AUGUST 19, 2015

A public hearing of the Council of the County of Kaua'i was called to order by Mel Rapozo, Chair, Committee of the Whole, on Wednesday, August 19, 2015, at 1:32 p.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Lihue, and the presence of the following was noted:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro (*present at 1:34 p.m.*)
Honorable KipuKai Kuali'i
Honorable JoAnn A. Yukimura (*present at 1:35 p.m.*)
Honorable Mel Rapozo

Excused: Honorable Mason K. Chock

The Clerk read the notice of the public hearing on the following:

“Resolution No. 2015-52 – RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO TERM LIMITS FOR COUNCILMEMBERS,”

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on July 15, 2015, and published in The Garden Island newspaper on July 22, 2015.

The following communications were received for the record:

1. Alshamma, Ibbie, August 3, 2015
2. Basko, Dr. Ihor, August 3, 2015
3. Brenner, Faye Reese, August 3, 2015
4. Clark, Margaret, August 3, 2015
5. Cowden, Felicia, August 2, 2015
6. Dinner, David, August 2, 2015
7. Faigle, Ted, August 2, 2015
8. Harmon, Linda, August 4, 2015
9. Hoeppner, Judie Lundborg, August 4, 2015
10. Janik, Richard J., August 3, 2015
11. Kaaumoana, Makaala, August 2, 2015
12. Kaohelauii, John W., August 3, 2015
13. Kelley, Mary Lu, August 4, 2015
14. Kobayashi, Chris, August 18, 2015
15. Marie, Katrina St., August 4, 2015
16. McDonald, Timory, August 4, 2015
17. McHenry, Marion, August 4, 2015
18. McHenry, Robert, August 4, 2015
19. Reeves, Elizabeth, August 3, 2015
20. Schavone, Tracey, August 4, 2015
21. Stone, Mary Isabella, August 4, 2015
22. Thurston, Anne, August 2, 2015

- 23. Trenton, Debra, August 3, 2015
- 24. Welsh, Wil, August 4, 2015
- 25. White, Judith, August 3, 2015

The hearing proceeded as follows:

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, we have registered speakers for this item.

Council Chair Rapozo: Okay. Was there any written testimony? I believe we got a breakdown. Yes, I see the log here. How many registered speakers do we have?

Ms. Fountain-Tanigawa: Currently, we have four (4) speakers.

Council Chair Rapozo: Can you call the first speaker?

Ms. Fountain-Tanigawa: The first registered speaker is Carl Imparato, followed by Ken Taylor.

CARL IMPARATO: Good afternoon Councilmembers. My name is Carl Imparato and I live in Hanalei. My July 15th testimony in opposition to this Resolution is attached to my written testimony, which I will hand in when I am done here. I apologize for my voice. My written testimony stated that this Resolution should be rejected because less than nine (9) years ago, Kaua'i's voters decisively indicated by sixty-nine percent (69%) to thirty-one percent (31%) that they wanted to impose term limits on County councilmembers. Such an overwhelming mandate should be respected, not dismissed by the Council. Number two, Kaua'i's voters clearly recognized that it is bad government to allow politicians to build ever increasing power bases while in office, making them more and more difficult to unseat. Number three, Kaua'i's voters clearly recognized that because Kaua'i does not have elections by district, it is extremely difficult for a non-incumbent, unless a person plays slate politics or has special name recognition to overcome the overwhelming advantages that come with longtime incumbency. Kaua'i's voters clearly recognize that the system for governing Kaua'i would be better with term limits because that would diminish some of the benefits of incumbency, enabling fair competition on Election Day, giving more people a reasonable opportunity to serve, and creating a better balance between career politicians and citizens with fresh ideas and fewer political debts. Kaua'i's voters clearly rejected the idea that there is any politician who could be so indispensable that he or she should be allowed to serve without limit. Instead, they voted for a balanced approach allowing term-limited politicians to run again as non-incumbents after a two (2) year leave. Today I would like to add three (3) additional points. First, one councilmember claimed that the voters were confused by having so many charter amendments on the ballot in 2006. In response, I point out that the percentage of voters who abstained from voting on the Term Limits Charter Amendment was far lower, just seven point nine percent (7.9%), than the percentages that abstained on any of the other charter amendments, typically twelve and a half percent (12.5%) to fifteen point eight percent (15.8%). The voters clearly knew what this charter amendment meant, and as a result, more people voted on this charter amendment than on any other charter amendment on the ballot. Second, to those councilmembers who claim that voters should be given the opportunity to vote again on the structure of government because times have changed, I reply that under that logic, it makes far more sense to put district

elections, which lost by a tiny margin of forty-nine point six percent (49.6%) to fifty point four percent (50.4%) back on the ballot, rather than term limits, which won by a resounded sixty-nine percent (69%) to thirty-one percent (31%) margin. But that seems unlikely to happen, as some Councilmembers have publically stated that their motivation behind this Resolution is to keep their political allies in office. I will make my third point when I come back, unless you want me to finish now.

(Councilmember Kaneshiro and Councilmember Yukimura were noted as present.)

Council Chair Rapozo: You can come back and finish.

Mr. Imparato: Okay. Thank you.

Council Chair Rapozo: You have a question from Councilmember Kagawa.

Councilmember Kagawa: Carl, do you believe that the State Legislature should have term limits?

Mr. Imparato: Possibly. I have not looked at that particular issue. It certainly warrants consideration, but I cannot say yes or no right now. I do think they should be here.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Ken Taylor, followed by Sandra Herndon.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. First of all, I would support one hundred percent (100%) of the things that the previous speaker said and I think it is really sad that you are wasting time on something like this at this point. If you really want to do something good for the community, you should be looking at putting forth a proposal that does not allow when you folks leave the table here to take a job across the street for at least two (2) years. That would be doing something really important. There is absolutely no reason after the voters said 2:1 that they wanted term limits. As Carl said, none of you are so important that we cannot do without you. If you feel strong that you want to do more then take a little break, go out and see what the world is about, and then rerun after a two (2) year absence. That would be a real benefit to everybody. I just hope that if you are going to put this forward, which I hope you do not, but if you do, then word it in such a way that each of you sitting here today fills out your term limits so that you automatically disappear, and then you can rerun after a two (2) year break. If you do not do that, you are self-serving and I think it is really, really sad that you are even wasting time on this. It is here now, so it is your call, but if it gets on the ballot it is going to go down in defeat and that is going to be as sad, sad thing, too. Anyway, please just let it die now and be done with it. Thank you.

Council Chair Rapozo: Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Sandra Herndon, followed by Felicia Cowden.

SANDRA HERNDON: Good afternoon Council. Sandra Herndon for the record. I do not think that there is anything that I could add to Mr. Imparato's testimony because I totally agree with him. I think that it was an overwhelming decision on the part of the community to establish and maintain term limits. I would not want to see that go on the ballot, because first of all, it costs money to put any kind of an item on the ballot; we know that. It might be minimal compared to some things, but the point is that not having term limits does not serve the community. Or to put it in a more positive light, having term limits does serve the community very well. Thank you.

Council Chair Rapozo: Thank you. Next speaker.

Ms. Fountain-Tanigawa: The last registered speaker is Felicia Cowden.

FELICIA COWDEN: Felicia Cowden for the record. I support having term limits. I do not support doing the send-down on what was decided by the voters in 2009. I thank you all for what you do and I appreciate it when people do move around into other positions in government. I think it makes a really extraordinary mayor, senator, or representative. There are a lot of opportunities to serve in other ways and people can come back, and in fact, many have and continue to do a very good job as a strengthened councilmember. If this was something that was driven by the populous, I would understand it more. The only place that I have heard this being requested is in this room. As far as I know, I am not hearing a community drive for it, whereas last time it was a pretty strong community drive for the term limits. Having had the experience of running against all of you, whom I really do like and respect and have positive feelings for all of you, I will tell you that it is a deeply advantaged position to be an incumbent and what was really interesting for me is that I had to go off the air, take away what is my normal thing of having a public presence, stopping everything that I normally do, just so that I am able to run. Whereas people who are incumbents are able to continue that, and coincidentally the County seems to create opportunities a whole lot of extra opportunities for marches, dinners, and everything else. It is not an even playing field and I do think it is fair to allow for room for others to challenge, and you all have a deep amount of experience that comes out when you are speaking in public and it is very easy for you to go on and do wonderful, good things in other venues and come back. I do not support the term limit removal. Thank you.

Council Chair Rapozo: Thank you. Next speaker.

Ms. Fountain-Tanigawa: We have no further registered speakers.

Council Chair Rapozo: Anyone else wishing to testify for the first time? Second time? Mr. Imparato.

Mr. Imparato: Once more, my name is Carl Imparato. I had one final point to make and that is that I have to note that it is a conflict of interest for a councilmember to vote on any matter that would personally benefit himself or herself. It is quite clear to me that for a councilmember to vote yes on this Resolution would be to vote for a measure that would be personally beneficial, financially, and politically for that councilmember. So I do not believe that it would

be ethical for any County Councilmember to vote yes on this Resolution, and the County Councilmembers who would want to do that really have to recuse themselves instead. I believe that the only ethical way is that the Council can proceed on the question of eliminating term limits for themselves would be either to reject Resolution No. 2015-52, to do as Mr. Taylor said and have the ongoing term limits apply to them, or finally, to amend the Resolution to change it into a nonbinding resolution that simply asks the Charter Review Commission to consider the matter of term limits and leaving it up to the Charter Review Commission to make a decision about what, if anything, should go on to the ballot. In conclusion, I ask you to reject this harmful, disrespectful, and I believe, self-serving and unethical Resolution. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Do you think it is self-serving for a politician to serve twenty (20) to thirty (30) years?

Mr. Imparato: No. That is not as I see the question on the table at all because the term limits that we are talking about here would be say after the existing term, you take a breather for two (2) years, and then you can come back. It is not self-serving to serve very, very...for as long as the voters want them. It is self-serving, in my opinion, to try to change the rules of the game so that you or any politician...not "you" in particular, Councilmember Kagawa, so that any politician can change the rules of the game to benefit themselves down the line. I think that part is self-serving and I think it is a great question. It is not black and white, but I believe it warrants consideration.

Councilmember Kagawa: If this were to go on the ballot, if it had the five (5) votes, which I doubt, but if it did go on and the voters vote for removal of term limits, would you say that we should just deny that decision and go back to the 2006 decision of the voters?

Mr. Imparato: Of course not. If the voters vote in 2016, 2018, and 2020 to do something, then that supersedes their vote in 2006.

Councilmember Kagawa: I am just checking. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I just wanted to know if your testimony is available in writing.

Mr. Imparato: Yes, I will hand it in here.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Thank you. You have one more clarifying question.

Councilmember Kualii: Maybe the answer is obvious, but I just want to ask it anyway. What do you mean when you say "take a breather" as far as a long time politician who inevitably may serve the County for twenty (20) years or whatever? With this law with term limits in place, they can only do eight (8) years,

and then they have to take a breather for two (2) years. What do you mean by "take a breather" and what is the reason for that? Why is that necessary?

Mr. Imparato: By "take a breather," I mean exactly what you said that they can serve for up to eight (8) years, they then stay away from the Council as a Councilmember for two (2) years, and then they can come back for another eight (8) if the voters so choose. Again, the reason for that is that it is critically important to try to balance the playing field because incumbents have tremendous advantages. The incumbents sit here every week and give out resolutions to little league teams and do all sorts of things which get them votes on and on and on, and they build their power base. I think it is very important to recognize that that does occur; it is not a bad thing, it is the way of life. In recognition of that, it makes sense to basically say that we need to balance the scales a little bit so that other people have an opportunity to serve. If that means that politicians or any individual takes two (2) years off the Council, on balance, I think that is a good price to pay for the benefits of increased competition.

Councilmember Kuali'i: So that balancing of the playing field, you are saying in every election the voters have a choice to either elect someone or not, and whether they are an incumbent or a newcomer, they have that same choice to elect them or not. So you are saying in this instance, taking away that choice of reelecting someone they might want to reelect is not as important as the choice of balancing the playing field? It is primarily so that somebody new has a chance to be elected? Is that what you are saying? Are you saying that the public's interest is better served by having somebody new elected, rather than letting them have the choice to reelect someone that they may want to reelect for a fifth term?

Mr. Imparato: What you say sounds good in an ideal world...

Councilmember Kuali'i: That is just the truth about elections.

Mr. Imparato: No, I think the truth about elections is that voters are influenced by many, many things and not just the facts of what a candidate is.

Councilmember Kuali'i: Yes, the process.

Mr. Imparato: If a candidate has a tremendous amount of money beyond another one, there is an un-level field. If another candidate has the ability to be on television every week at these Council Meetings and to hand out plaques and do other things, that is another thing equivalent to having a lot of money. I believe that factor needs to be mitigated. I do not disrespect anybody here. I do not think there is anyone here that I say should not serve for ten (10) or twenty (20) years, God-willing, but I do think that there would be no harm if anyone here had to leave for two (2) years after their eighty (8) years, and then the voters could bring them back afterwards. I think that price is a reasonable price to pay for increasing competition.

Councilmember Kuali'i: I get your point about mitigation and that is just some people's choice and some others not necessarily, as far as the principle about giving the voters a choice in every election.

Mr. Imparato: Understood. I think that was discussed in depth in 2006 and sixty-nine percent (69%) of the voters opted for that.

Councilmember Kualii: Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Mr. Imparato, thank you for your testimony. I wanted to ask you about and explore the issue of the unethical nature of voting for something that would benefit ourselves directly. I believe that is what you are saying. You are saying that if we cast a vote in support, we are casting a vote to give ourselves the benefit, not a future council, but potentially ourselves. Is that what you were saying?

Mr. Imparato: That is exactly what I am saying. I am not saying that it is illegal and I am not the County Attorney, but I think in my heart, it does not feel like it is the right thing to do, to cast a vote so that you, or any councilmember here, gets to reset the clock and basically say, "Well, I would have had to be out of Council in two (2) or four (4) years. I am going to vote for this, which means I can stay on." I personally feel that that is not an ethical thing to do.

Councilmember Hooser: With pay raises, for example, if we vote on increasing salaries, those do not take effect until the other election. So you are saying that if we were to pass something like this, that it should not impact any of us, but future councilmembers who are elected? So the ethical thing to do would be for us to be termed out, and then the people coming in would be impacted by whatever?

Mr. Imparato: Correct. That is what Mr. Taylor said and I agree with that. I think that the easier solution though is to basically say that we ask the Charter Review Commission to do things on its own, which is why we have a Charter Review Commission. If they feel that it is inappropriate to bring back to the voters, then they do that. Even if you vote to put that before the Charter Review Commission arguably, you are doing something for yourself, but you are two (2) steps removed at that point, in my opinion.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: Thank you. Question? Please keep it to clarifying questions because I think we are kind of straying away from the subject.

Councilmember Kualii: Along the same lines of that on the concern about a conflict of interest because of a personal, financial, and political benefit; so if a councilmember was to vote on lowering taxes, and we pay taxes, and we will benefit from that lower taxes. Is that the same issue? Is that why you are saying that legally it is still legal, but you are just saying that in your opinion it is unethical? Even though now this vote is not the decision...the decision is to give the voters the choice to vote. To put something on the ballot for the voters to decide...if they decide, like someone said, to pass removing that and we benefitted from that, everyone would benefit from it because it would be the new law going forward by Charter that the voters decided, not this body.

Mr. Imparato: There is a scale and things are not black and white. Of course, if a councilmember were to vote for lower taxes, which helps that

councilmember, but helped forty thousand (40,000) other people then that would be one thing. If a councilmember voted on something which basically lowered the taxes for City and County councilmembers, I would say that that would be much closer to the black scale of unethical and I think this Resolution goes closer to the black side of it.

Councilmember Kuali'i: As far as helping everyone, I would argue that it is helping everyone because it is giving everyone more choice.

Council Chair Rapozo: Councilmember Kuali'i, we are not here to argue. You can ask clarifying questions.

Councilmember Kuali'i: I am just bringing up the flipside to help everyone.

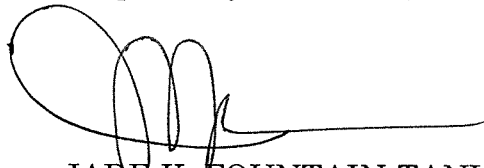
Council Chair Rapozo: We will have an opportunity to discuss our positions at the Committee Meeting. Any more clarifying questions? Thank you.

Mr. Imparato: Thank you for your attention.

Council Chair Rapozo: Anyone else wishing to testify for a second time? If not, this public hearing is closed.

There being no further testimony on this matter, the public hearing adjourned at 1:55 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a long horizontal flourish extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk